

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

1 NORBERTO MONTESINO et al.,

2 Plaintiffs,

3 v.

4 INSTITUTO MEDICO DEL NORTE,
5 d/b/a HOSPITAL WILMA N.
6 VAZQUEZ,

7 Defendant.

CIVIL NO. 98-1495 (RLA)

CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

RECEIVED & FILED
1999 SEP 10 AM 8:10

8
9 **MINUTES AND ORDER OF STATUS/SETTLEMENT CONFERENCE**
10 **HELD ON SEPTEMBER 8, 1999**

11 The parties appeared before the undersigned in chambers for a
12 Status/Settlement Conference on September 8, 1999, from 4:00 p.m. to
13 5:05 p.m.

14 PEDRO AGUIRRE DE JESUS, ESQ., represented plaintiffs.
15 Defendant INSTITUTO MEDICO DEL NORTE and AIICO were represented by
16 MIRTA RODRIGUEZ ESQ. and JOSE R. ORTIZ VELEZ, ESQ. appeared on
17 behalf of INSTITUTO MEDICO DEL NORTE's excess insurance carrier.

18 **Amendment to the Complaint**

19 The Court queried counsel AGUIRRE as to plaintiffs' intention
20 to amend the complaint from one of "malpractice" to one of
21 "negligence". See Motion Amending Complaint, **docket No. 26**, filed
22 on August 30, 1999. Counsel justified plaintiffs' request by
23 explaining that the attending physician at the Emergency Room of the
24 Wilma N. Vázquez Hospital had been negligent by omission because he
25 had failed to discover the knee fracture on the night of the
26

1 accident. After due consideration, plaintiffs' Motion Amending
2 Complaint (**docket No. 26**) is **DENIED**. Not only did the motion fail
3 to comply with the procedural requisites of Rule 15 Fed. R. Civ. P.,
4 but the proposed amendment would be nugatory. Furthermore,
5 plaintiffs failed to provide any justification for their belated
6 attempt to amend their pleading on the eve of trial.

7
8 **Summary Judgment and Settlement**

9 The Court also engaged the parties in individual settlement
10 discussions. Counsel for defendants were adamant about their
11 refusal to settle, arguing that plaintiffs' own medical expert, DR.
12 CULVERWELL, had categorically stated in a letter dated May 19, 1999
13 to plaintiffs' counsel that "[the] delay in the diagnosis did not
14 affect the outcome and therefore really does not represent
15 malpractice."

16 Defendants argued that the imposition of Rule 11 sanctions was
17 warranted inasmuch as they were not privy to this letter until the
18 physician's deposition was taken in June. Counsel indicated that
19 their clients had incurred in unnecessary expenses upwards of five
20 thousand dollars (\$5,000.00) in having two attorneys travel to New
21 York in June to depose DR. CULVERWELL and three (3) other
22 plaintiffs' witnesses while all along counsel for the plaintiffs had
23 in his possession DR. CULVERWELL's letter.

24 Rather than paying any settlement amount, counsel for
25 defendants offered to waive costs, expenses, attorney's fees and
26

CIVIL NO. 98-1495 (RLA)

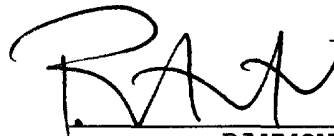
Page 3

1 Rule 11 relief in the event of dismissal of plaintiffs' claims.

2 After a lengthy discussion with counsel the Court determined
3 that based on the opinion of plaintiffs' own expert, plaintiffs had
4 no viable claim. Accordingly, defendants' summary judgment motion,
5 notified in accordance with the undersigned's Standing Order and
6 which stands unopposed, was **GRANTED**. Judgment shall be entered
7 accordingly.
8

9 IT IS SO ORDERED.

10 San Juan, Puerto Rico, this 9th day of September, 1999.

11 

12 RAYMOND L. ACOSTA

13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26